

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
filed in the U.S. District Court Northern District of California on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. CV 10-02840 EMC	DATE FILED 6/28/10	U.S. DISTRICT COURT 450 Golden Gate Avenue, P.O. Box 36060, San Francisco, CA 94102
PLAINTIFF ABAXIS INC		DEFENDANT CEPHEID
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 see Complaint	5413732	
2	5624597	
3	6251684	
4	5776563	
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wicking	(BY) DEPUTY CLERK Sheila Rash	DATE June 30, 2010
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Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

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E-filing

EMC

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 ABAXIS, INC.,

11 Plaintiff,

12 v.

13 CEPHEID,

14 Defendant.

Case No. **CV 10 2840**

COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Abaxis, Inc. ("Plaintiff" or "Abaxis") alleges as follows:

2 **Nature of the Action**

3 1. This is an action for patent infringement arising under the patent laws of the
4 United States, Title 35 of the United States Code.

5 **Parties**

6 2. Plaintiff Abaxis is a California corporation with its principal place of business at
7 3240 Whipple Road, Union City, California 94587.

8 3. On information and belief, Defendant Cepheid ("Cepheid" or "Defendant") is a
9 California corporation with its principal place of business at 904 Caribbean Drive, Sunnyvale,
10 California 94089.

11 **Jurisdiction and Venue**

12 4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§
13 1331 and 1338(a).

14 5. On information and belief, Defendant Cepheid does business in this District and
15 has committed acts of infringement complained of herein within this District and elsewhere.
16 Personal jurisdiction over Defendant is proper in this Court because their contacts with this
17 District are sufficient to render Defendant amenable to personal jurisdiction in this District.

18 6. Venue is proper within this District pursuant to 28 U.S.C. §§ 1391(b),(c) and
19 1400(b) for at least the reason that Defendants reside in this District as defined in § 1391(c).

20 **Intradistrict Assignment**

21 7. For purposes of intradistrict assignment pursuant to Local Rule 3-2(c), this
22 Intellectual Property action is to be assigned on a district-wide basis.

23 **Count 1: Patent Infringement**

24 **(U.S. Patent No. 5,413,732)**

25 8. On May 9, 1995, the United States Patent and Trademark Office duly and legally
26 issued U.S. Patent No. 5,413,732 ("the '732 Patent"), entitled "Reagent Compositions for
27 Analytical Testing." A copy of the '732 Patent is attached hereto as Exhibit A.

28 9. As a licensee of the '732 patent, Cepheid has been aware of the existence of the

1 patent. Cepheid, however has discontinued paying royalties on the Xpert MRSA because it
2 alleges that there is no longer any infringement. Abaxis has diligently sought information from
3 Cepheid to evaluate these assertions. To date, Cepheid has not provided the information. Nor has
4 Cepheid provided any reasons why it has been unable to timely provide the information. Nor has
5 Cepheid provided any time frame by which it will provide the information. In addition, Cepheid
6 has indicated its intent to impose limitations of unknown scope on Abaxis' ability to obtain the
7 true and correct information regarding Cepheid's products. Furthermore, the limited allegations
8 of non-infringement that Cepheid has provided appear to conflict with inspections of the Xpert
9 MRSA product.

10 10. Accordingly, resort to the civil court process, with the protections and procedures
11 of the discovery process, is necessary to ensure that Abaxis obtains true and correct information
12 about the Xpert MRSA product and how it is made. This information is needed to confirm
13 Abaxis' belief that Cepheid's Xpert MRSA product infringes the '732 patent, and that the
14 infringement is willful.

15 11. Defendant's infringement has injured Abaxis and will cause irreparable injury and
16 damage in the future unless Defendants are enjoined from infringing the '732 patent.

17 **Count 2: Patent Infringement**

18 **(U.S. Patent No. 5,624,597)**

19 12. On April 29, 1997, the United States Patent and Trademark Office duly and legally
20 issued U.S. Patent No. 5,624,597 ("the '597 Patent"), entitled "Reagent Compositions for
21 Analytical Testing." A copy of the '597 Patent is attached hereto as Exhibit B.

22 13. Defendant has been and is directly and indirectly infringing the '597 patent by
23 making, using, selling and/or offering for sale the Xpert MRSA product in the United States.

24 14. Upon information and belief, Defendant's infringement is willful.

25 15. Defendant's infringement has injured Abaxis and will cause irreparable injury and
26 damage in the future unless Defendants are enjoined from infringing the '597 patent.

1 **Count 3: Patent Infringement**

2 **(U.S. Patent No. 5,776,563)**

3 16. On July 7, 1998, the United States Patent and Trademark Office duly and legally
4 issued U.S. Patent No. 5,776,563 ("the '563 Patent"), entitled "Dried Chemical Compositions."
5 A copy of the '563 Patent is attached hereto as Exhibit C.

6 17. Defendant has been and is directly and indirectly infringing the '563 patent by
7 making, using, selling and/or offering for sale the Xpert MRSA product in the United States.

8 18. Upon information and belief, Defendant's infringement is willful.

9 19. Defendant's infringement has injured Abaxis and will cause irreparable injury and
10 damage in the future unless Defendants are enjoined from infringing the '563 patent.

11 **Count 4: Patent Infringement**

12 **(U.S. Patent No. 6,251,684 B1)**

13 20. On June 26, 2001, the United States Patent and Trademark Office duly and legally
14 issued U.S. Patent No. 6,251,684 B1 ("the '684 Patent"), entitled "Dried Chemical
15 Compositions." A copy of the '684 Patent is attached hereto as Exhibit D.

16 21. As a licensee of the '684 patent, Cepheid has been aware of the existence of the
17 patent. Cepheid, however has discontinued paying royalties on the Xpert MRSA because it
18 alleges that there is no longer any infringement. Abaxis has diligently sought information from
19 Cepheid to evaluate these assertions. To date, Cepheid has not provided the information. Nor has
20 Cepheid provided any reasons why it has been unable to timely provide the information. Nor has
21 Cepheid provided any time frame by which it will provide the information. In addition, Cepheid
22 has indicated its intent to impose limitations of unknown scope on Abaxis' ability to obtain the
23 true and correct information regarding Cepheid's products. Furthermore, the limited allegations
24 of non-infringement that Cepheid has provided appear to conflict with inspections of the Xpert
25 MRSA product.

26 22. Accordingly, resort to the civil court process, with the protections and procedures
27 of the discovery process, is necessary to ensure that Abaxis obtains true and correct information
28 about the Xpert MRSA product and how it is made. This information is needed to confirm

1 Abaxis' belief that Cepheid's Xpert MRSA product infringes the '684 patent, and that the
2 infringement is willful.

3 23. Defendant's infringement has injured Abaxis and will cause irreparable injury and
4 damage in the future unless Defendants are enjoined from infringing the '684 patent.

5 **Prayer for Relief**

6 **Wherefore**, Plaintiff Abaxis prays for judgment against Defendant as follows:

7 a) That the Court find that the Defendant has knowingly and willfully infringed and
8 is presently infringing, directly or indirectly, United States Patent Nos. 5,413,732, 5,624,597,
9 5,776,563 and 6,251,684 B1;

10 b) That the Court find the '732, '597, '563 and '684 patents valid and enforceable;

11 c) That the Court award Abaxis damages or other monetary relief, including
12 prejudgment interest, for Defendant's infringement;

13 d) That the Court treble the damages awarded to Abaxis as provided by 35 U.S.C. §
14 284;

15 e) That the Court find this to be an exceptional case entitling Abaxis to an award of
16 attorney's fees, expenses, and costs pursuant to 35 U.S.C. § 285;

17 f) That the Court enjoin the Defendant and its officers, directors, agents, and
18 employees, from infringing, directly or indirectly, the '732, '597, '563 and '684 patents;

19 g) That the Court award Abaxis such other and further relief as the Court deems just
20 and appropriate.

21 **Jury Demand**

22 Plaintiff Abaxis demands trial to a jury on all issues so triable.

23
24 Dated: June 28, 2010

COOLEY LLP

25
26 by: 
Ricardo Rodriguez

27 Attorneys for Plaintiff Abaxis, Inc.